

To: Jones, Jim[Jones.Jim@epa.gov]
From: Vaught, Laura
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Subject: Fw: Holes in chemical regulations hampered West Virginia response

FYI

From: POLITICO Pro <politicoemail@politicopro.com>
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Subject: Holes in chemical regulations hampered West Virginia response

Holes in chemical regulations hampered West Virginia response

By Erica Martinson

1/13/14 7:36 PM EST

The coal-processing chemical that cut off the water supply to 300,000 West Virginians is one of tens of thousands of potentially hazardous substances that have fallen through a decades-old loophole in federal regulations, leaving authorities with little information on what dangers it poses.

That means that the water crisis that has gripped West Virginia since Thursday is just one example of the kind of crisis that frequently happens on smaller scales around the country, advocates for tougher federal oversight say. And they say other communities could be just as much at risk.

The problem is that there is “no publicly available health and safety information for the vast majority of chemicals on the market,” said Andy Igrejas, director of advocacy group Safer Chemicals, Healthy Families. “And that’s clearly the case with this spill.”

The landmark law on chemical safety, the 1976 Toxic Substances Control Act, “allowed this chemical to be in widespread use for decades without even the most basic information ... made available to EPA, West Virginia, much less the public,” said Richard Denison, a senior scientist at the Environmental Defense Fund. As a result, he said, emergency responders and water managers were left “scrambling” after an estimated 7,500 gallons of 4-methylcyclohexane methanol spilled from a ruptured storage tank into the Elk River near Charleston, W.Va.

Authorities in West Virginia didn’t immediately know what the chemical was, what health risks it posed or how the water supply system should respond.

“All of that mess is a direct consequence of a failure of this federal law that we passed back in the Ford administration and has never been amended in 38 years,” Denison said.

Some greens hope the West Virginia crisis will sway discussions of a proposed rewrite of the

law. Sen. David Vitter (R-La.) and the late Sen. Frank Lautenberg (D-N.J.) introduced the Chemical Security Improvement Act (S. 1009) last year, though negotiations have been slow-moving. The bill would give EPA more right to require testing on some dangerous chemicals and evaluate many others.

The chemical that spilled in West Virginia — also called crude MCHM — is one of 64,000 chemicals in use in the United States before 1979 that the 1976 law “grandfathered,” imposing no requirements that anyone prove they are or are not safe.

The company was also not required to report to EPA that it was storing the chemical as part of the agency’s Toxic Release Inventory, a program designed under another law to provide the public with information about the use and location of chemicals that could be dangerous if released.

Reports from the ground in West Virginia also raise questions about lax state and local oversight of the plant where Freedom Industries was storing the MCHM along the river, a mile and a half upstream from the Kanawha Valley Water Treatment Plant. State authorities weren’t even aware that Freedom was storing the chemical that close to the river. After the spill occurred, water plant operators initially thought they could filter out the chemical — and it took all day Thursday to realize that wasn’t the case.

The Wall Street Journal said state regulators hadn’t visited the site since 1991, when it housed a different operation, and that state emergency managers were unfamiliar with a report the company submitted last year about its chemicals that pose “immediate (acute) hazards.”

The Charleston Gazette said state health officials never responded to a three-year-old suggestion from federal advisers for an effort to prevent accidents involving hazardous chemicals. That recommendation followed an August 2008 explosion that killed two workers at the Bayer CropScience plant in Institute, W.Va.

Questions about the safety and proper handling of MCHM continued to linger despite some welcome news Monday, when Gov. Earl Tomblin and other authorities declared the water safe enough for people to begin using it for drinking, washing and cooking, as long as customers first flushed out their home plumbing systems. As many as 25 percent of customers could have water by the end of the day Monday, The Associated Press reported.

State and federal health officials “agreed that a level of 1 part per million” for that chemical is safe, and that customers could begin using water once the chemical was at or below that threshold, EPA spokeswoman Alisha Johnson said. Greens criticized the decision to accept what they said was very limited information about the safety of the chemical.

The Federal Emergency Management Agency said Monday that 169 patients had been treated for exposure to the tainted water. The AP said 14 people were admitted to the hospital, none with serious illnesses, and that no fish kills were reported.

Environmentalists said the holes in the regulatory structure for dangerous chemicals go well

beyond West Virginia.

“The biggest problem right now is in the way we regulate chemicals in the United States,” said David Lillard, spokesman for West Virginia Rivers Coalition. “They have to be proven to be unsafe, whereas in the European Union, they have to be proven to be safe.”

It’s not unusual for companies to store chemicals alongside waterways, Lillard noted, since that’s where a lot of manufacturing and transportation takes place.

The reality is that last week’s spill is just one of many similar chemical disasters that happen often — this one was only on a much larger scale than usual.

Just last month AL Solutions, a West Virginia-based metal recycler, agreed to put in safeguards after three employees died in a 2010 explosion at a plant in New Cumberland, W.Va. EPA accused the company of failing to conduct adequate hazard analyses, and found evidence of previous fires at the facility as well as Clean Air Act and worker safety violations. (The company last year opened a state-of-the-art facility in Burgettstown, Pa., to replace it.)

Even the few thousand chemicals EPA has regulated since passage of the 1976 law aren’t fail-safe. In November, a federal environmental appeals board ordered Elementis Chromium Inc. to pay a \$2.5 million penalty for failing to disclose employees’ health risks from exposure to hexavalent chromium — the same known carcinogen made famous in the movie “Erin Brockovich.”

But the grandfathered chemicals pose an almost impossible challenge for regulators. Even to review one, the agency has to “jump through extraordinary hoops,” proving that there’s a risk at the start, Igrejas said.

Igrejas pointed to asbestos as a highly recognizable example of a toxic chemical that EPA couldn’t quite regulate under the toxics law.

In 1980, EPA attempted to gather information on asbestos, facing litigation every step of the way. The agency basically “spent the ’80s preparing the rule,” with a 40,000-page record, and was then sued and lost. A district court threw out the rule in 1991, and the agency’s regulations for the product now revolve around requirements for its safe removal.

But “asbestos is still allowed in commerce,” Igrejas said. It was driven from the market because of tort liability, not regulations, he said.

The agency reviewed fewer than 2 percent of the 64,000 chemicals “grandfathered” by the bill, and placed limits on five, the EDF’s Denison said.

Some members of Congress called Monday for hearings on the West Virginia spill, especially in light of the proposed rewrite of the 1976 law.

“This spill has understandably caused tremendous anxiety and major inconveniences for West

Virginians, as well as untold costs for our State's businesses and economy," Rep. Nick Rahall (D-W.Va.) said in a statement. He said he intends to use his position on the House Transportation Committee "to press hard for answers about how this could have happened and to identify what steps should be taken to prevent this kind of disaster in the future."

Meanwhile, Democratic Reps. Henry Waxman of California and Paul Tonko of New York — both members of the House Energy and Commerce Committee — wrote to subcommittee Chairman John Shimkus (R-Ill.) on Monday to ask for a hearing on regulatory gaps that led to the spill.

As the committee is considering ideas for reforming TSCA, "it is critically important that we understand how the law allowed a potentially harmful chemical to remain virtually untested for nearly forty years," the pair said in the letter. "Even if scientists and regulators now turn their attention to the risks posed by MCHM, we should not have to wait for a major contamination event to learn the most basic information about a toxic chemical in commerce."

Efforts to rewrite the 1976 law will rely on a difficult balancing act: drawing support from people who want more federal control and public information about chemicals, as well as those who want more regulatory and legal certainty for the chemicals industry.

Senate Commerce Chairman Jay Rockefeller (D-W.Va) separately asked Senate appropriators on Monday to consider boosting funding for the federal Chemical Safety Board above what the House has proposed. He wants it raised to the amount allocated in President Barack Obama's 2014 budget request.

Rockefeller had earlier secured promises for an investigation by the CSB, which arrived in West Virginia on Monday.

The American Chemistry Council said other steps that could prevent future accidents include "better coordination among federal, state and local agencies," as well as improved enforcement of existing rules. "This incident also underscores the importance of ensuring that emergency plans are developed and coordinated with all of the key players in the community including government, infrastructure and utility providers, and first responders," the council said.

Talia Buford contributed to this report.

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